ties. The bag could have been obtained from the Prisons Department where the Appellant had to hand it over, before he was detained in prison for trial.

The learned President however, considered DW.1's evidence and found contradiction with regard to his claim of ownership of the missing bag. According to DW.1's cautioned statement his other bag containing documents was confiscated by the police while the missing bag according to the prosecution evidence contained clothings and the cannabis. On that ground he concluded that it was not probable that the latter belonged to DW.1. The police register (Ex. P7) however shows that the bag contains cash and books and not only documents. That necessitated an explanation from DW.1 before any conclusion was reached whether there was a real contradiction. The prison officer (DW.2) gave evidence of the receipt of only one bag from DW.1 before detaining him in the prison. That bag (Ex. D8) was produced at the trial. Be that as it may, I cannot with respect agree that the contradicting evidence by itself is adequate in convicting the Appellant of the charge in the light of the irregularities, wrong inferences and improper admission of evidence which, in my view have occasioned a failure of justice and cannot be cured by section 422 of the Criminal Procedure Code. The learned President also failed to apply the correct test in considering the defence. The conviction is therefore against the weight of the evidence as a whole. A retrial will serve no purpose in the light of the above. I have no alternative but to quash the conviction and set aside the sentence. The Appellant is entitled to an acquittal and discharge and I order accordingly.

Conviction quashed.

Solicitors: *Stanley Ponniah & Co.*

TEOH SUAN ENG v. LEW MENG SHIN & ANOR.

[O.C.J. (George J.) December 4, 1981]
[Raub – Civil Suit No. 6 of 1980]

Damages – Spinal injuries resulting in paraplegia – Quantum – $75,000 for pain and suffering.

The plaintiff was travelling as a passenger in a motor bus when it went off the road. The plaintiff suffered a fracture of the first lumbar vertebra and injury to her spinal cord that resulted in paraplegia. Liability in negligence was admitted by the defendants.

The plaintiff was earning $85 per month as a clerk before the said accident.

Held: the plaintiff was awarded agreed special damages: $4,877; and for loss of earnings up to date of judgment: $14,400; services of a maid up to date of judgment: $9,000; future loss of earnings; $22,300; services of a maid for the future: $13,900; pain and suffering: $75,000 totalling $139,477.

Per Curiam: "[there was] no excuse for the legal advisers of the plaintiff resting their case on a one line badly worded medical report."

Cases referred to:–

(1) *Raja Mokhtar bin Raja Yaacob* v. *Public Trustee* [1970] 2 M.L.J. 151

(2) *Oliver* v. *Ashman* [1961] 3 W.L.R. 669; [1961] 3 All E.R. 323, C.A.

CIVIL SUIT.

G. Varghese for the plaintiff.
S.P. Veloo for the defendants.

Cur. Adv. Vult.

George J.: On the morning of the September 25, 1976 the Plaintiff was travelling as a passenger in a motor bus that was proceeding from the Casino and Hotel Complex at Genting Highlands towards Kuala Lumpur when it went off the road as a result of which the Plaintiff suffered a fracture of the first lumbar vertebra and injury to her spinal cord that has resulted in the Plaintiff suffering from paraplegia. The Plaintiff had testified that she has no control over movements of her bowel and bladder. The paucity of information in the medical report has been the subject of justified criticism by learned Counsel for the defence and has caused me more than a little anxiety on whether I should hold that in fact the Plaintiff is a paraplegic for life and whether her disabilities include lack of control over the excretory organs. Fortunately for the Plaintiff the medical report has a reference to treatment for "bowel and bladder care". My attention was drawn to the reference on "paraplegia" at 304 of the *Short Encyclopaedia of Medicine for Lawyers by Levitt* where it is stated that in the paralysis known as paraplegia the bladder and rectum are often involved in the paralysis. As the reflexes of micturition and defecation are controlled by the spinal cord at the first lumbar vertebra level and since the Plaintiff was treated for bowel and bladder care the probabilities are, by a nose as it were, in favour of the contention that the Plaintiff did in fact suffer a lack of control of those excretory functions. My forced researches into the realms of medicine suggest that where there is paralysis as a result of injury to the spinal cord and there is no significant im-

provement in the condition in the first few months after the occurrence of the injury the probabilities are that the disabilities would be permanent which appears to be the condition of the Plaintiff. I am constrained to say that I can think of no excuse for the legal advisers of the Plaintiff resting their case on a one line badly worded medical report.

Liability in negligence having been admitted by the defendants I am left with having to adjudicate on the quantum of compensation.

In respect of the claim for special damages the parties have not been able to agree on loss of earnings by the Plaintiff and on the costs of alleged nursing care. In respect of all the other items claimed as specials agreement was arrived at in the sum of $4,877.

Since 1970 the Plaintiff had worked as a clerk for one Chin Radio (Kedah) Sdn. Bhd. attending on customers who had service problems in respect of their radios and television sets and other electrical equipment. She had started at a basic salary of $85 per month and was supplied food and lodging. There were yearly increments and when the accident happened on the September 25, 1976 she was still a "service" clerk drawing a basic monthly salary of $130 with $15 as a special relief allowance and she continued to be supplied with food and lodging. The Plaintiff testified that she was also paid certain commission, wages for overtime work and an annual honus. PW2, a director of Chin Radio (Kedah) Sdn. Bhd. confirmed this but although she said that there were vouchers to support these payments none were produced. PW2 produced the relevant page from the Register of Employees relating to the Plaintiff which gave comprehensive particulars of the Plaintiff's earnings but significantly the columns for overtime and for miscellaneous payments were, apart from entries in respect of special relief allowance, left blank. It seems to me that if in fact overtime and commission had been paid the amounts paid would have been entered in the register in the same manner in which payments made as special relief allowance were entered.

The Plaintiff also claimed $45 as food allowance and $30 as lodging allowance but conceded that her share of the room she shared with another employee was only worth $15/-.

It is my finding that her average emoluments per month in 1976 was $205/-.

It was contended that the Plaintiff would have annual increments in her basic wages and that there was a likelihood that she would be promoted to be a supervisor. PW2 said that she thought that the Plaintiff would get accelerated promotion and attain the heights of a supervisor because the Plaintiff was related to the Managing Director of the Company. If not for that relationship she did not consider that the Plaintiff would have gone beyond being a senior clerk which status, had she not met with the accident, she would have enjoyed with some accelerated promotions by 1981 at a basic salary of $300/-.

Looking at the salaries paid to the Plaintiff from 1970 and the increments given to her between 1970 and 1976 it did not impress on me that the Plaintiff enjoyed any special privileges by virtue of her vague relationship with the Managing Director and I could see no basis for PW2's assessment that the Plaintiff would enjoy accelerated promotion in the future. And looking at the salaries of other employees who had joined the company much earlier than the Plaintiff the speculations by PW2 seem unjustified. I would allow for an annual increment of $10 for each of the years after 1976 up to 1981 (which compares well with increase of basic salary between 1970 and 1976 of only $45 or an average of just over $7 per annum). On that basis the Plaintiff's basic salary would have, by 1981, gone up to $185 and her gross to $260 and since the increases are computed at $10 per month after each year the average monthly gross earning for that period 1977 to 1981 is $240. As there was no loss of earning up to the end of 1976 I would award the Plaintiff for loss of earnings from January 1, 1977 to the date of judgment, the sum of $14,400 on the basis of $240 for 60 months.

In computing future loss of earnings I would also use $240 as a basis against a multiplier of 10 years and applying the tables arrive at the sum of $22,300/-. In using $240 I have considered and accept that the Plaintiff would receive from time to time increments but also have considered, on the available evidence, that she is not so completely disabled that she is not capable of mitigating the loss. The multiplier of 10 years was arrived at having in mind the various contingencies and also that the Plaintiff is also being compensated for the 5 years prior to the date of judgment.

For nursing care the Plaintiff is entitled to a reasonable amount. The evidence is that the service of a personal maid was sufficient to assist the

Plaintiff in her disability. In my assessment it would be reasonable to compute this aspect of compensation on the basis of $150 per month. Accordingly, for the period of 5 years up to the date of judgment I would allow $9,000 and for the future, again applying the tables, $13,900.

What then is left is to make an award for that head of damages that has come to be known as pain and suffering and loss of amenities.

In *Raja Mokhtar bin Raja Yaacob* v. *Public Trustee*[1], Raja Azlan Shah, J. (as he then was) said, "Any compensation for loss of amenities and pain and suffering must be artificial. No sum can be adequate. But the court must give an award which would present artificially the gravity of the loss and the severity of the pain and suffering. It is hard to give cogent reasons for this figure or for that. One can only assert. (See *Oliver* v. *Ashman*[2]).

I have been referred to comparable awards in 5 local cases also involving paralysis of the lower limbs, and which it is said are far more serious than the present case. These cases do not readily fit into the present case. It seems to me that in a given case the quantum of damage is even more than usually at large. Looking at the plaintiff's background, a person of his calibre and standing would lose much more than would a student teacher or petrol gauger or cement mixer or gardener or garage fitter.

In a case like the present the plaintiff's real loss is not so much his physical injury as the loss of those opportunities to lead a full and normal life which are now denied to him by his physical condition and for what he will suffer from being unable to do so. There are two elements involved, what he has lost and what he must feel about it and of the two the latter is generally the more important to the injured man. For everyday of his life he is acutely conscious of what he has suffered and what he has lost. He must therefore be compensated, as far as money can do it, for that and for the mental strain and anxiety which results."

The Plaintiff in that case was, at 41 years of age, a senior civil servant and went through considerably greater pain and suffering (before ending up with almost similar disabilities) suffered by the Plaintiff in the instant case. I was also referred to the judgments in the cases involving the student teacher, the petrol gauger, and the cement mixer.

The discernible trend in the awards given to cases involving paralysis has been to start off with about $60,000 for a paraplegic claimant and increasing the quantum depending on the degree of gravity of the injuries (and disabilities) and other relevant factors like the status in life of the claimant.

Unlike what was being done in England and Singapore from about the early seventies, there had not been in Malaysia, generally speaking, any significant increase in the level of awards for the factor of inflation in the cost of living. This could very well be because up to 1973 such inflation as there was in Malaysia paled in comparison to the runaway inflation in the United Kingdom.

With the oil crisis in 1973 inflation at a significant level finally hit our shores and the need to reflect this economic reality as a factor in the assessment of damages based on comparable awards came to be recognised by the Malaysian Courts.

It has been suggested that the increase in awards should be equated with the Consumer Price Index which has not been done by any of our courts or the courts in Singapore. Even in England where it would appear that substantial increases have been made to the level of awards compared to awards given in the sixties, there does not seem to have been an attempt to equate the increase with the rise in the figures of the Consumer Price Index. While inflation certainly is a factor that has to be considered in considering comparable awards made in the earlier decades, the Consumer Price Index is only one of many factors that has to be had in mind in assessing the increase to be made in the award. In my view, *inter alia*, factors like the investment climate, the increase or decrease of returns on investment (for example the returns on fixed deposits have almost doubled since the sixties), the rate of acceleration of capital appreciation are all factors to be had in mind in considering the inflation factor in the context of reflecting it in an award of compensation. It is thus seen that a mathematical formula for the inflation factor cannot be devised and in any event there does not appear to be any compelling reasons to devise such a formula.

On the facts of the instant case for pain and suffering and loss of amenities I would award $75,000.

Accordingly, there will be judgment for the Plaintiff as follows:—

(1) Agreed special damages	...	$ 4,877
(2) Loss of earnings up to date of judgment	...	14,400
(3) Future loss of earnings	...	22,300
(4) Services of a maid up to date of judgment	...	9,000
(5) Services of a maid for the future	...	13,900
(6) Pain and suffering and loss of amenities	...	75,000
	Total	$139,477

The above items (1), (2) and (4) shall bear interest at 4% per annum from the date of the accident; item (6) shall bear interest at 6% per annum from date of service of the writ; the judgment sum of $139,477 shall bear interest at 8% per annum from date of judgment until realisation.

The defendants will also pay the costs of the action.

Order accordingly.

Solicitors: *Richard Ho & Co.; V.P. Nathan & Partners.*

SALIH BIN MOHAMED v. LOH KIM FOON

[A.C.J. (Hashim Yeop A. Sani J.) March 16, 1982]
[Kuala Lumpur – Civil Appeal No. 48 of 1981]

Damages – Quantum – Appeal against award for general damages – Whether there was evidence to support magistrate's finding.

The defendant appealed against the learned Magistrate's award of $5,800 for general damages. The appellant contended that particulars of the injuries regarding partial loss of hearing were not pleaded and that there was no evidence to support the finding of the magistrate.

Held, dismissing the appeal: there was sufficient evidence for the magistrate to come to his conclusion.

CIVIL APPEAL.

S.S. Muker for the appellant.
K.C. Chew for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani J.: This was an appeal against quantum only in a running down case where the learned Magistrate made an award of $5,800 for general damages. The appellant was unhappy about the award because it included an item to cover the partial loss of hearing of the Plaintiff/Respondent. The appellant contended firstly that particulars of these injuries were not pleaded and secondly there was no evidence to support the finding of the Magistrate.

As regards the first question a glance at the Statement of Claim would reveal that the physical injuries sustained by the Plaintiff were set out and the claims were for general and special damages. Since there was a specific claim for general damages it was not necessary in my view for the statement of claim to also plead partial loss of hearing which was really a matter of evidence.

The next question is whether there was sufficient evidence for the learned Magistrate to come to the conclusion on the balance of probabilities that the injury (loss of partial hearing) was sustained as a result of the accident concerned. I think there was. The medical report dated October 1978 (page 38 of record) was in the agreed bundle of documents. There was clear evidence of the injury in that report. The history of that injury was set out in the testimony of the Plaintiff (at pages 16-18 of the record) at page 16 he said:

"I do not remember what happened in hospital but I did remember some people cleaning wound on my face. They also stitched wound on my face. It was 8 to 9 stitches. About one and half month after the accident I realised that I felt pain in my right ear. The pain was off and on. I consulted a Chinese sinseh to cure the pain. The Chinese sinseh was from Penang by the name of Chai Kew. He gave me Chinese herbs. I took the Chinese medicine for 5 to 6 months. The medicine did help me but the pains still come and go. Then I go to General Hospital in Penang. I went to Penang General Hospital to treat my ear in July 1978."

At page 18 he denied that the partial loss of hearing was not caused by the accident.

The award was a global award covering all the injuries sustained including the loss of hearing. The gist of the argument by the appellant against the award of the Magistrate was that the award was not supported by evidence not that the Magistrate misconstrued the evidence. In this case since there was in my opinion sufficient evidence for the Magistrate to come to his conclusion the appeal must fail.

The appeal was dismissed with costs.

Appeal dismissed.

Solicitors: *Lovelace & Hastings; Chew & Co.*